

**Letter of Findings Number: 03-20130603P  
Tax Administration  
For Tax Period 2013**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

**ISSUE**

**I. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the assessment of a penalty.

**STATEMENT OF FACTS**

Taxpayer, a company, filed a protest with the Indiana Department of Revenue ("Department") requesting the abatement of a penalty. An administrative hearing was conducted and this Letter of Findings results. Additional facts will be provided as needed below.

**I. Tax Administration–Penalty.**

**DISCUSSION**

At the outset, the Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Taxpayer's protest letter states that it is requesting the abatement of a penalty. The penalty relates to the withholding taxes for a non-resident shareholder, per Taxpayer. The protest letter, written by Taxpayer's accounting company, states:

We took over as the company's outside accountants in 2013. In August we set up an electronic payment for a 2013 estimated tax payment to be paid on September [], 2013 using the banking information provided to us by the previous accountants. We were unaware the client had changed bank accounts for electronic transfers. Consequently your departments [sic] notified the client of the payment rejection and the client sent a check the next day. You assessed a penalty in the amount of \$495.

IC § 6-8.1-10-2.1(a) states:

- (a) Except as provided in [IC 6-3-4-12\(j\)](#) and [IC 6-3-4-13\(l\)](#), a person that:
- (1) fails to file a return for any of the listed taxes;
  - (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
  - (3) incurs, upon examination by the department, a deficiency that is due to negligence;
  - (4) fails to timely remit any tax held in trust for the state; or
  - (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;
- is subject to a penalty.

[45 IAC 15-11-2\(c\)](#) provides guidance on when a negligence penalty will be waived:

The department shall waive the negligence penalty imposed under IC § 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in

carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

(Emphasis added).

Taxpayer has not shown "reasonable cause" under [45 IAC 15-11-2\(c\)](#); the Department finds that Taxpayer failed to exercise "ordinary business care," as stated in [45 IAC 15-11-2\(c\)](#), when it did not advise its accountant of the proper banking information for electronic transfers. Therefore, Taxpayer has not met its burden under IC § 6-8.1-5-1.

### **FINDING**

Taxpayer's protest is denied.

*Posted: 01/28/2015 by Legislative Services Agency*

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